

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

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California Department of Insurance

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA
SACRAMENTO**

In the Matter of the Licenses and Licensing
Rights of

INVESTORS TITLE COMPANY,

Respondent.

File No. VA 1022-AP

ACCUSATION

(Insurance Code §§12389, 12404, 12405.7, and
12408.5);

**NOTICE OF NONCOMPLIANCE AND
HEARING**

(Insurance Code §§12389(d), 12404, and
12411);

DEMAND FOR MONETARY PENALTY
(Insurance Code §§12404, 12409, and 12976);
and

**RIGHT TO ISSUE ORDER TO SHOW
CAUSE, STATEMENT OF CHARGES, AND
NOTICE OF HEARING**
(Insurance Code §§790.03, 790.05, 12389(d),
and 12409).

The Insurance Commissioner of the State of California (hereafter “Insurance
Commissioner”) in his official capacity alleges that:

JURISDICTION AND PARTIES

1. Respondent, INVESTORS TITLE COMPANY (hereafter “INVESTORS”), is licensed by the Insurance Commissioner to act as an underwritten title company in the State of California, pursuant to §12389 of the California Insurance Code.¹ INVESTORS is licensed to transact the business of title insurance in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura; and,

2. In June 2001, the Department of Insurance (hereafter “Department”) began investigating the operations of INVESTORS, pursuant to California Insurance Code §12389(c), after the Department received numerous complaint letters and telephone calls that raised the issue of whether certain activities implemented by INVESTORS, from May 2000 to November 2001, constituted violations of California’s insurance laws. The examination occurred in several INVESTORS’ branch offices in numerous counties in which INVESTORS owns and maintains title insurance offices. The investigation included interviews with employees of INVESTORS, and the examination of INVESTORS’ books and records as authorized by California Insurance Code §12407; and,

3. California Insurance Code §12389.2 provides that once an underwritten title company has obtained a license from the Commissioner to transact its business, the company “shall continue to comply with the requirements as to its business set forth in [this code], and in the other applicable sections of this code, and in the other laws of this state;” and,

4. California Insurance Code §12404 provides, in pertinent part, that “it is unlawful for any title insurer, underwritten title company, or controlled escrow company, to pay, directly or indirectly, any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business;” and,

¹ Unless otherwise stated, all references are to the California Insurance Code.

5. California Insurance Code §12404(b)(1) defines “person” as “any individual or entity who is any owner or prospective owner, lessee or prospective lessee of real property or any interest therein, any obligee or prospective obligee of an obligation secured or to be secured either in whole or in part by real property or any interest therein, or any person who is acting or who is in the business of acting as agent, representative, attorney, or employee of those persons” (hereafter collectively referred to as “12404 Persons”); and,

6. California Insurance Code §12404(c) provides that certain activities enumerated in that section are “deemed per se inducements for the placement or referral of title insurance business by any person, and are unlawful. California Insurance Code §12404(g) explains that “The Legislature hereby intends that this section... shall be liberally construed for the purpose of protecting consumers of title business;” and,

7. California Insurance Code §12405.7 provides that no person engaged in the business of selling or furnishing to the public, directly or indirectly, evidence to title to real property shall: (a) pay for or furnish or offer to pay for or furnish any part of the advertising or promotional material of the customer in connection with the sale or encumbrance of real property; and,

8. California Insurance Code §12408.5 provides that no underwritten title company shall pay any commission for the solicitation or negotiation of any services constituting the business of title insurance.

FACTUAL ALLEGATIONS

9. During the time period identified in Paragraph 2 above, the Department received numerous complaints from persons concerned about INVESTORS' conduct relating to illegal

1 rebate activities. The Department investigated these complaints, and as a result, the Insurance
2 Commissioner alleges that INVESTORS has engaged in the following illegal rebate activities:

3 A. Fraudulent Expense Reports

4 INVESTORS submitted inaccurate, fabricated and/or fraudulent receipts,
5 invoices, and expense reports totaling not less than one hundred eight thousand
6 seven hundred sixty-four dollars and twenty-one cents (\$108,764.21).

7
8 INVESTORS' sales managers and sales representatives submitted in excess of one
9 thousand (1,000) receipts and invoices documenting expenditures for gift
10 certificates, miscellaneous gifts and/merchandise, food, beverages, printing costs,
11 catering and entertainment, and company special events purportedly made on
12 behalf of 12404 Persons and unrelated to the business of title insurance. However,
13 once the sales managers and sales representatives were reimbursed for these
14 inaccurate, fabricated and/or fraudulent receipts, invoices, and expense reports, the
15 money obtained was used for personal expenses and/or on behalf of 12404
16 Persons. Examples of these receipts, invoices, and expense reports include, but are
17 not limited to:
18

- 19 (1) Gift certificates, miscellaneous gifts and/merchandise for airline
20 tickets, limousine rides, spa treatments, rounds of golf, golf balls,
21 baseball games, basketball games, concert tickets, ice skating tickets,
22 annual fundraisers, wine, cigars, jewelry, chocolates, candy, books,
23 candles, balloons, perfume, luggage, film processing, car washes,
24 movie tickets, cooking supplies, raffle prizes, door prizes, boom
25 boxes, gift baskets, flower arrangements, gift cards, pastries, party
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27
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1 supplies, party gifts, baby shower gifts, baby gifts, wedding gifts,
2 closing gifts, Christmas bulbs, Christmas gifts, and Thank You gifts;

3 (2) Food and beverages for birthdays, anniversaries, potlucks,
4 appreciation lunches, fundraisers, cook-offs, congratulation lunches,
5 association parties, office parties, cocktail parties, retreats, and
6 seminars;
7

8 (3) Printing costs for educational handouts, property profiles, buyer
9 books and handouts, welcome brochures, public reports to
10 developers, open house pass outs, farm labels and handouts, new tract
11 information sheets, home tract information packets, tract floor plans,
12 real estate flyers, real estate newsletters, Top 40 Radio Promotions,
13 Hot Listings, listing pictures, advertisements in real estate directories,
14 promotional calendars, stationary, Christmas cards, postage, and
15 office supplies;
16

17 (4) Catering and entertainment for open houses, network parties,
18 breakfast meetings, awards breakfasts, luncheon meetings, hospitality
19 dinners, grand openings, and broker caravans;
20

21 (5) Company Special Events including golf trips, boxing events, hockey
22 games, bowling parties, mixers, banquets, Feng Shui Workshops, and
23 Las Vegas Conventions; and

24 (6) Business Support Services including computer classes, website
25 classes, Cold Calling classes, realtor training programs, and seminars
26 entitled "How to Succeed in Business."
27

28 //

1 B. Business Support Services

2 INVESTORS paid vendor invoices totaling not less than one hundred forty-
3 four thousand, four hundred forty-nine dollars and twenty-seven cents
4 (\$144,449.27) to assist 12404 Persons in the furtherance of their businesses.

5 Investigation records reveal that on sixty three (63) separate occasions,
6 NVESTORS paid vendor invoices for business support services and promotional
7 materials on behalf of, and for the direct benefit of, 12404 persons, which were
8 unrelated to the business of title insurance. Examples of the vendor invoices paid
9 by INVESTORS include, but are not limited to:
10

- 11 (1) Forty-three thousand, four hundred and eighty-nine dollars and four
12 cents (\$43,489.04), on twelve (12) separate occasions, to El Monte
13 Printing for flyers and postage;
- 14 (2) Three thousand eight hundred eighteen dollars and eighty-three cents
15 (\$3,818.83), on eleven (11) separate occasions, to Farms Labels Plus
16 for mail merging and direct imprinting;
- 17 (3) Fifty- five thousand five hundred sixty-four dollars and sixty cents
18 (\$55,564.60), on twelve (12) separate occasions, to Genie Graphics
19 for mail merging, refi letters, buyers letters, Just Sold letters, post
20 cards merging, personal return labels, flyers, promotional calendars,
21 and newsletters;
- 22 (4) Twelve thousand thirty six dollars and forty cents (\$12,036.40), on
23 five (5) separate occasions, to Hi-Speed Printing for letterhead,
24 brochures, cards, exhibits, sales aides, and flyers;

- 1 (5) Twenty-five thousand twenty dollars and forty cents (\$25,020.40), on
2 twelve (12) separate occasions, to Permits, Etc., for city and county
3 permits;
4
5 (6) Three hundred dollars (\$300.00), on one (1) occasion, to Realty
6 Response for a raffle prize;
7
8 (7) One thousand nine hundred twenty dollars (\$1,920.00), on one (1)
9 occasion, to Solutions for Small Business for mail merge information
10 and postage;
11
12 (8) One thousand eight hundred dollars (\$1,800.00), on eight (8) separate
13 occasions, to The Real Estate Book for half page advertisements; and
14
15 (9) Five hundred dollars (\$500.00), on one (1) occasion, to Ventura Club
16 for “Casino Night.”

17 **STATUTORY ALLEGATIONS**

18 10. The actions by INVESTORS, outlined in Paragraphs 9(A) and 9(B) above, have
19 resulted in the following violations of law:

20 A. INVESTORS’ practice of submitting inaccurate, fabricated and/or
21 fraudulent receipts, invoices and expense reports, as described in Paragraph 9A above,
22 exceeds action permissible under §12404 et seq. of the California Insurance Code.
23 Payments in the form of commissions, compensation, and/or other consideration to any
24 person as an inducement for the placement or referral of title business constitute unlawful
25 rebate activities in violation of California Insurance Code §§12404(a), (c)(2), (c)(6), and
26 12408.5;
27
28

1 B. INVESTORS' practice of providing business support services unrelated to
2 the business of title insurance, as described in Paragraph 9B above, exceeds action
3 permissible under §12404 et seq. of the California Insurance Code. Business support
4 services in the form of promotional materials, flyers, brochures, letterhead, labels, mail
5 merge, postage, and supplies are accouterments for the benefit of real estate agents, real
6 estate brokers, and lenders, constitute inducements for the placement or referral of title
7 business, and constitute unlawful rebate activities in violation of California Insurance
8 Code §§12404(a), (c)(1), (c)(2), (c)(6), 12405.7, and 12408.5;

10 C. INVESTORS' actions, as described in Paragraph 9 above, constitute a
11 failure to comply with a final Order of the Commissioner, dated May 1, 2000, in which
12 the Commissioner ordered INVESTORS to cease and desist from engaging in methods,
13 acts, or practices in violation of Insurance Code §§12404 et. seq.;

15 D. INVESTORS' actions, as described in Paragraph 9 above, constitute an
16 unfair method of competition and/or unfair or deceptive acts or practice in this State in
17 violation of subsection (c) of §790.03 of the California Insurance Code;

18 11. The facts alleged in Paragraph 9 above constitute grounds for the Insurance
19 Commissioner to restrict or suspend Respondents' licenses and licensing rights on a statewide
20 basis or in specified counties, pursuant to California Insurance Code §§12404 and 12409;

22 12. Pursuant to California Insurance Code §§12389, 12404, 12410, 12411, 12414.25,
23 and 12928.6, the Insurance Commissioner hereby notifies INVESTORS that based upon the facts
24 alleged in Paragraph 9 above, INVESTORS is in violation of the above-referenced provisions,
25 and that INVESTORS has ten (10) days to comply with the provisions of those Sections, or
26 INVESTORS will be considered to be willfully failing to comply. If INVESTORS is found
27 willfully failing to comply, it will be subject to an Order by the Commissioner prohibiting it from
28

1 conducting its businesses for a period of not more than one year, and will also be subject to the
2 suspension or revocation of its licenses and licensing rights by the Insurance Commissioner.

3
4 **DEMAND PURSUANT TO**
5 **CALIFORNIA INSURANCE CODE §§12409 and 12414.25**

6 As a result of INVESTORS' actions, as set forth in Paragraph 9 above, and pursuant to
7 California Insurance Code §12409, INVESTORS is liable to the people of California in the
8 amount of One million, two hundred sixty six thousand, sixty seven dollars and forty cents
9 (\$1,266,067.40), which is five times the amount of the unlawful rebates of Two hundred fifty
10 three thousand, two hundred thirteen dollars and forty-eight cents (\$253,213.48); and,

11 As a result of INVESTORS' actions, as set forth in Paragraph 9 above, and pursuant to
12 California Insurance Code §12414.25, INVESTORS is liable to the state in the amount of Five
13 thousand dollars (\$5,000.00), for its willful failure to comply with a final Order of the
14 Commissioner; and,

15
16 Demand for One million, two hundred seventy one thousand, sixty seven dollars and forty
17 cents (\$1,271,067.40) is hereby made. Pursuant to California Insurance Code §12976,
18 INVESTORS has ten (10) days to make payment.

19
20 **ORDER TO SHOW CAUSE PURSUANT TO CALIFORNIA INSURANCE CODE**
21 **§§790.05, 12389(d), and 12409**

22 WHEREAS, the Insurance Commissioner has reason to believe, based upon the facts set
23 forth in Paragraph 9 above, that INVESTORS has engaged in and currently is engaging in unfair
24 methods of competition and/or unfair or deceptive acts or practices, and in unlawful rebate
25 activities in this State as defined in California Insurance Code §790.03; and,

26
27 WHEREAS, the Insurance Commissioner has reason to believe that a proceeding by the
28 Insurance Commissioner would be in the public interest, he shall bring an Order to Show Cause

1 pursuant to §§790.05, 12389(d) and 12409 of the California Insurance Code, containing a
2 statement of the charges and INVESTORS' potential liability under §790.05. The Insurance
3 Commissioner hereby reserves his right to bring, in the future, such Order to Show Cause against
4 INVESTORS for the acts set forth in Paragraph 9 above.

5 WHEREFORE, the Insurance Commissioner prays for the following:

- 6 1. The restriction or suspension of INVESTORS' licenses and licensing rights to act as
7 an underwritten title company in the State of California, on a statewide basis or in
8 specified counties, pursuant to California Insurance Code §12409;
9
- 10 2. The imposition of Notice on INVESTORS' that it has ten (10) days within which to
11 comply with the provisions of §§12404 et seq. If INVESTORS' does not comply, its
12 noncompliance will be considered willful, and will subject INVESTORS, after a
13 hearing, to an Order by the Insurance Commissioner, pursuant to California Insurance
14 Code §12389(d), prohibiting INVESTORS from conducting title business for a period
15 of not more than one year, and to the possible suspension or revocation of its licenses
16 and licensing rights pursuant to California Insurance Code §12411;
17
- 18 3. The imposition of a monetary and civil penalty of \$1,271,067.40 pursuant to
19 California Insurance Code §§790.035, 12404, 12409, and 12976; and
20
- 21 4. The reservation of the right to bring an Order to Show Cause against INVESTORS
22 pursuant to California Insurance Code §§790.03 and 790.05.
23

24 Dated: July 15, 2004

JOHN GARAMENDI
Insurance Commissioner

25
26
27 By: _____
Rebecca M. Westmore
28 Staff Counsel